

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

HOLMES PROSTHETIC  
CENTER LLC,

Plaintiff

V.

**ZURICH AMERICAN INSURANCE  
COMPANY AND SEDGWICK  
CLAIMS MANAGEMENT SERVICES  
INC.**

## Defendants

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Civil Action No: 4:20-CV-1633

**DEFENDANT ZURICH AMERICAN INSURANCE COMPANY'S  
ORIGINAL ANSWER AND DEFENSES**

Defendant Zurich American Insurance Company (“Zurich”) files this Original Answer and Defenses to Plaintiff’s Original Petition<sup>1</sup> as follows:

## 1. Selection of Discovery Level

No response is required.

## 2. Statement of Relief Sought

No response is required.

### 3. Parties and Service of Citation

Zurich lacks knowledge or information sufficient to form a belief about the allegations contained in the first paragraph of section 3.

Zurich lacks knowledge or information sufficient to form a belief about the allegations contained in the second paragraph of section 3.

<sup>1</sup> Zurich is filing its answer to Plaintiff's Original Petition filed in state court as it has not replead since the case was removed to this Court.

Zurich admits the allegations contained in the third paragraph of section 3.

**4. Factual History**

Zurich lacks knowledge or information sufficient to form a belief about the truth allegations contained in section 4.

**5. Causes of Action**

**A. Misrepresentation**

Zurich denies the allegations contained in section 5A.

**B. Negligent Misrepresentation**

Zurich denies the allegations contained in section 5B.

**B. Quantum Meruit**

Zurich denies the allegations contained in the second section 5B.

**C. Promissory Estoppel**

Zurich denies the allegations contained in section 5C.

**5. Attorneys' Fees**

Zurich denies the allegations contained in the second section 5.

**DEFENSES**

Zurich asserts the additional following defenses including defenses under Federal Rule of Civil Procedure 12(b)(1) and (6):

1. Plaintiff's claims are barred against Defendant, in whole or in part, because Plaintiff has failed to exhaust all administrative remedies prior to filing this lawsuit. Jurisdiction is mandatory before the Texas Department of Insurance. This Court lacks

jurisdiction over Plaintiff's claims, and Plaintiff has failed to state claims upon which relief may be granted.

2. The negligence and/or actions of Plaintiff were, in whole or part, a proximate cause or producing cause of the occurrence in question and/or the alleged damages.

3. The occurrence in question and/or the alleged damages were proximately caused and/or were the effect of a producing cause, in whole or in part, by the acts, omissions, fault, negligence, or other conduct of third parties.

4. In the event Defendant is found liable to Plaintiff, any such liability being expressly denied, Defendant is entitled to contribution, credit, and/or indemnity, as provided by the laws and statutes of the State of Texas including, but not limited to, the provisions of Chapters 32 and 33 of the Texas Civil Practice and Remedies Code, as well as submitting issue of proportionate fault and/or proportionate responsibility to assigned by the tier of fact, as well as other applicable laws and statutes.

6. Plaintiff failed, either in whole or in part, to mitigate damages as required under applicable law.

7. Plaintiff's claims and the damages it seeks are barred because Plaintiff has failed to comply with or satisfy conditions precedent.

8. Defendant is entitled to an offset and/or credit for any settlements and/or payments made.

9. The claim is not covered under the workers compensation policy issued by Defendant and is not owed under applicable law.

**PRAYER**

Zurich American Insurance Company prays that the Court dismiss Plaintiff's claims pursuant to Rule 12(b)(1) and (6); that Plaintiff take nothing by their suit; and that Defendant recover its costs together with such other and further relief to which it may be justly entitled.

Respectfully submitted,

/s/ Blair Dancy

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**ZURICH AMERICAN INSURANCE**

**COMPANY**